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# SUMMARY NOTES ON MAJOR IPR ISSUES AT PLAY IN LEBANON

SUPPORT FOR LEBANON'S ACCESSION TO THE WORLD TRADE  
ORGANIZATION (WTO) PROJECT  
FROM BOOZ ALLEN HAMILTON  
TO USAID

03/14/2011

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ORGANIZATION (WTO) PROJECT

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TO USAID LEBANON ECONOMIC GROWTH OFFICE

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## Summary Notes on Major IPR Issues at Play in Lebanon

IPR protection, and enforcement against illegal uses of copyright and other intellectual property rights, is very important for Lebanon's economic development. IPR could contribute more to the economy if intellectual property rights were more effectively enforced.

Below are a few numbers that demonstrate the contribution of IPR, in particular copyrights to the economy in Lebanon:

- In 2005, the total copyright industries in Lebanon contributed around US\$1.04 billion to the annual gross domestic product (GDP), employed almost 50,000 workers, and contributed 4.75% to the GDP and 4.49% to overall employment<sup>1</sup>
- Copyright industries continue to report high piracy levels, for example, the Business Software Alliance reports U.S. losses of \$29 million in 2009 due to piracy of all of its members' software titles, with the piracy rate growing to 75%, representing increases in losses for the fifth straight year and increased piracy levels for the third straight year (up from 73% in 2007). The record industry reported at least \$3 million in illegal sales and a 70% piracy in 2008.
- In 2000, a study carried out by Statistics Lebanon, Ltd. between April and June 2000 estimated that, due to cable piracy alone, the Lebanese government lost approximately US\$38 million in 1999, including lost taxes, social security contributions, and the earnings of the Lebanese government if the cable industry was legitimate.<sup>2</sup>

Intellectual property rights (IPR) are one of the main concerns of the U.S. Government and the European Union as Lebanon negotiates its WTO accession.

Major outstanding IPR issues include: the Copyright law, Cable Piracy, Pharmaceuticals and general IPR enforcement issues. The ability of the GOL to end cable TV piracy will strongly influence the final decision of many WTO members regarding Lebanon's accession

### ***A. Amendment of the Copyrights Law of Lebanon***

The GOL is considering an overhaul of its 1999 Copyright Law, early drafts of which would have posed problems for copyright owners. The WTO Project provided technical assistance to draft a bill that will be fully TRIPS-compliant and

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<sup>1</sup> *The Economic Contribution of Copyright-Based Industries in Lebanon*. by Roger Malki World Intellectual Property Organization publications - 2007

<sup>2</sup> Special 301 report Lebanon 2010.

in conformity with the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)<sup>3</sup>. The experts that have been recruited for the task delivered, on February 28, 2011, two versions of the draft in both Arabic and English, in addition to a white paper explaining the rationale behind the required amendments.

In the 1990s, the Internet exploded as a medium for legitimate electronic commerce but also for significant (and growing) online infringement, so members of the World Intellectual Property Organization had, in 1996, agreed upon two treaties, the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), to properly protect copyright in the digital environment. Lebanon's 1999 law addresses some, but not all, of the elements of the 1971 Paris text of the Berne Convention (Lebanon is currently a member of the Rome 1928 text), TRIPS and as well as the two WIPO Treaties.

In respect of the foregoing, it was deemed necessary for Lebanon's 1999 Law to be further modernized and brought into full compliance with TRIPS as well as the WCT and the WPPT, which Lebanon acceded to in early 2010. It is also understood that, by separate legislation, Lebanon will be expected to seek to accede to the 1971 Paris text of the Berne Convention, to bring its international treaties status up-to-date.

To summarize, the draft amendments' to the Copyrights law suggested by the Project's experts aim at achieving the following:

1. Ensure the modernization of definitions and full compatibility with TRIPS, the WCT and WPPT.
2. Ensure the protection of "computer programs" consistent with the TRIPS Agreement and the WCT.
3. Ensure 1971 Paris text Berne Convention and TRIPS compatible "presumptions."
4. Ensure proper point of attachment for works, performances and phonograms.
5. Ensure no confusion between the coverage (and definitions) of "communication to the public" versus "broadcast."
6. Ensure appropriately tailored moral rights for authors (or performers) as envisaged in the Berne Convention (or WPPT), without impinging on other Berne (or WPPT) exclusive rights.
7. Ensure rights balanced with appropriate exceptions and limitations that involve special cases, do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate

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<sup>3</sup> Please note that in January 2010, a Joint Committee of the Parliament approved Lebanon's accession to the WCT and WPPT, which would help furthering Lebanon's path toward a more effective copyright protection in the online environment

- interests of the right holder, in line with the Berne Convention, the TRIPS Agreement, the WCT and the WPPT.
8. Ensure exclusive rights of authors and related rights owners compatible with the WPPT.
  9. Ensure remedies provisions (civil, provisional, border, and criminal) compatible with the TRIPS Agreement.
  10. Ensure compatibility with the WCT and WPPT regarding technological protection measures (Article 11 of the WCT and Article 18 of the WPPT) and rights management information (Article 12 of the WCT, and Article 19 of the WPPT).
  11. Ensure retroactive protection consistent with the Berne Convention, the TRIPS Agreement, the WCT and WPPT.

## ***B. Cable Piracy and Enforcement issues***

### *i. Cable Piracy:*

The current Copyrights Law of Lebanon provides sound protection for the Cable industry. Cable Piracy could be addressed through better IPR enforcement of Copyrights.

The USAID WTO Project, in previous phases has recommended solutions to the Cable Piracy issue to the Ministry of Economy and Trade. Although cable piracy could be addressed only through better copyrights enforcement, the Project at the request of the Ministry of Economy and Trade provided help to set up a regulatory framework for cable providers in order to facilitate the implementation of the Copyrights law. The Ministry has yet to take significant actions in this regards.

### *ii. Enforcement issues in General:*

Lebanon has to ensure that the Special Police Bureau and the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit continues to actively run raids against piracy targets on request, including end-user software piracy. It also needs to take steps to provide the Unit with *ex officio* raiding authority. A well functioning unit, however, also requires sufficient budget to enable it to accomplish its duties.

This is an area that needs significant work and will take time.

### *iii. The Judicial System:*

The courts in Lebanon remain a weak link in the enforcement chain. Prosecutors are inactive, courts are slow and judgments /penalties are not deterrent. Judges are mainly unaware and/or unsympathetic with the IP laws. Continuous training for judges is required. In addition, introducing IPR and general WTO principles as mandatory courses in law schools and more importantly in the curricula of the training institute for judges is crucial. Also, there is a need to work with the Government of Lebanon to reduce the frequency of judges' rotations in trade/IPR courts, which will help in keeping experienced judges in their positions and optimize their training and knowledge. Ideally, the establishment of special IPR courts is recommended.

### ***C. Pharmaceutical issue***

The pharmaceutical issue in Lebanon is related to both the Ministry of Health and the Ministry of Economy and Trade (MOET). The MOET is the Ministry in charge of dealing with the IPR aspect of the problem.

The major issues regarding pharmaceutical industry in Lebanon evolves around the following issues:

- Inadequate protection of data. The US pharmaceutical industry complains that the Lebanese Ministry of Health is registering drugs on the basis of data derived **NOT** from the original product being registered, but from the original product being copied and,
- Counterfeiting.

The Ministry of Economy and Trade acknowledges that there is a problem with respect to the pharmaceutical industry's intellectual property rights protection in Lebanon (mainly the inadequate protection of data).

This issue could affect WTO accession if not solved by the GOL. Many solutions are possible, including but not limited to, providing a favourable interpretation of the term "undisclosed data" that figures in Article 47 of the Patent Law or amending the existing Article 47 of the Patent Law of Lebanon.

According to Ms Karin Ferriter (USTR Representative-Member of the IP delegation which visited Lebanon from July 22 to 24 2010) both the Ministers of Health and of Economy and Trade agreed to adopt the US interpretation of the term "undisclosed data" that figures in Article 47 of the Lebanese Law.

If the Ministers follow through on their commitment, this will lead to an acceptable data protection and will prevent copies of drugs from entering the market based

on data generated by the originator companies. There were, however, no clear timelines or mechanisms for the adoption of this interpretation.

In August 2010, the pharmaceutical industry forwarded to the US embassy the interpretation of the industry of article 47 of the Lebanese patents law, as a follow up on the meeting the US delegation had with both the Minister of Health and the Minister of Economy and Trade. Please find attached a copy of the pharmaceutical industry interpretation of article 47 of the patent law. Please note this interpretation was drafted by the pharmaceutical industry's lawyer Me. Walid Nasser.

Since 2000, USAID has been providing technical assistance to MOET for Lebanon to join the WTO. To optimize this constructive cooperation a direct involvement of the Minister of Economy and Trade, in person, in the accession process is highly recommended. Having this higher level of participation would make sure that the resources of the WTO Project are better utilized and that the process moves more swiftly and efficiently.